

1 HB203
2 197307-1
3 By Representative Johnson
4 RFD: Financial Services
5 First Read: 19-MAR-19

8 SYNOPSIS: Under existing law, the Alabama Taxpayers'
9 Bill of Rights and the Uniform Revenue Procedures
10 Act governs the administrative procedures of the
11 Department of Revenue and local governments
12 relating to taxpayers' rights and the
13 confidentiality of taxpayer information.

14 This bill would eliminate the current
15 prohibition against entering into installment
16 payment agreements with a taxpayers who exercise
17 their right to appeal finally assessed state tax
18 liabilities, eliminate the current 12-month
19 limitation on the length of such agreements, and
20 revise the security of confidential taxpayer
21 information.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

To amend Sections 40-2A-4 and 40-2A-10, Code of Alabama 1975, relating to the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act; to authorize the Department of Revenue to appoint multiple taxpayer advocate officers; to expand the authority of the department to allow for installment agreements with taxpayers who are seeking to pay their outstanding tax liabilities; and to clarify the role of the department in the development and maintenance of its automated tax records systems.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 40-2A-4 and 40-2A-10 of the Code of Alabama 1975, are amended to read as follows:

"§40-2A-4.

"(a) Rights of the taxpayer.

"(1) For purposes of this subsection and subsections (c) and (d), the term "department" shall include the Department of Revenue, a self-administered county or municipality, or a private examining or collecting firm, depending on whether the Department of Revenue, a self-administered county or municipality, or private examining or collecting firm is conducting the examination of the taxpayer.

"(2) At or before the commencement of an examination of the books and records of a taxpayer, the department shall provide to the taxpayer the current version of Publication 1A. Publication 1A shall provide, in simple and non-technical terms, a statement of the taxpayer's rights. Those rights

1 include the right to be represented during an examination, an
2 explanation of their appeal rights, and the right to know the
3 criteria and procedures used to select taxpayers for an
4 examination.

5 "(3) At or before the issuance of a preliminary
6 assessment, the department shall provide to the taxpayer in
7 simple and non-technical terms:

8 "a. A written description of the basis for the
9 assessment and any penalty asserted with respect to the
10 assessment.

11 "b. A written description of the method by which the
12 taxpayer may request an administrative review of the
13 preliminary assessment.

14 "(4) At or before the issuance of a final
15 assessment, the department shall inform the taxpayer by a
16 written statement of his or her right to appeal to the Alabama
17 Tax Tribunal or to the circuit court.

18 "(5) Except in cases involving suspected criminal
19 violations of the tax law or other criminal activity, the
20 department shall conduct an examination of a taxpayer during
21 regular business hours after providing reasonable notice to
22 the taxpayer. A taxpayer who refuses a proposed time for an
23 examination on the grounds that the proposed examination would
24 cause inconvenience or hardship must offer reasonable
25 alternative times and dates for the examination.

26 "(6) At all stages of an examination or the
27 administrative review of the examination, and in any appeal to

1 the Alabama Tax Tribunal, a taxpayer is entitled to be
2 assisted or represented, at his or her own expense, by an
3 authorized representative. The department shall prescribe a
4 form by which the taxpayer may designate a person to represent
5 him or her in the conduct of any proceedings, including
6 collection proceedings, resulting from actions of the
7 department. In the absence of this form, the department or the
8 Alabama Tax Tribunal may accept such other evidence that a
9 person is the authorized representative of a taxpayer as it
10 considers appropriate. This ~~provision~~ subdivision shall not be
11 construed as authorizing the practice of law before the
12 department, Alabama Tax Tribunal, or any court in this state
13 by a person who is not a licensed attorney.

14 "(7) A taxpayer shall be allowed to make an audio
15 recording of any in-person interview with any officer or
16 employee of the department relating to any examination or
17 investigation by the department, provided, however, the
18 taxpayer ~~must~~ shall give reasonable advance notice to the
19 department of his or her intent to record and the recording
20 shall be at the taxpayer's own expense and with the taxpayer's
21 own equipment. The department shall also be allowed to record
22 any interview if the taxpayer is recording the interview, or
23 if the department gives the taxpayer reasonable advance notice
24 of its intent to record the interview. The department shall
25 provide the taxpayer with a copy of the recording, but only if
26 the taxpayer provides reimbursement for the cost of the
27 transcript and reproduction of the copy. The cost shall be

1 reasonable as prescribed by ~~regulations~~ rules issued by the
2 department.

3 "(8) This section shall not apply to criminal
4 investigations or investigations relating to the integrity of
5 any officer or employee of the department.

6 "(b) Department responsibilities generally.

7 "(1) The commissioner shall appoint ~~a Taxpayer~~
8 ~~Advocate~~ one or more taxpayer advocates from among the
9 employees of the department. ~~This officer~~ These officers shall
10 receive and review inquiries or complaints concerning matters
11 that have been pending before the department for an
12 unreasonable length of time, or matters where the taxpayer has
13 been unable to obtain a reasonable response after several
14 attempts to communicate with the department employee assigned
15 to the taxpayer's case, or his or her immediate superiors. In
16 addition, ~~this officer~~ these officers shall review and have
17 the authority to waive a penalty for reasonable cause as
18 provided in subsection (h) of Section 40-2A-11, shall promptly
19 review inquiries concerning release of property levied upon,
20 the erroneous filing of liens, the failure to release a lien
21 for good cause, or other matters complained of by a taxpayer
22 or other affected party. ~~The Taxpayer Advocate A taxpayer~~
23 advocate shall have no authority nor issue any ruling with
24 regard to any taxes collected by or on behalf of a
25 self-administered county or municipality.

26 "a. ~~The Taxpayer Advocate shall A taxpayer advocate,~~
27 subject to the approval of the commissioner or the assistant

1 commissioner, shall issue taxpayer assistance orders in the
2 form and manner prescribed herein and by department
3 regulations rules.

4 "b. Notwithstanding any statute of limitation or
5 other provision in this title, a taxpayer assistance order may
6 declare that any tax, including a final assessment, was
7 erroneously assessed or reported and is not a liability due
8 the state, or that a petition for refund was erroneously
9 denied by the department.

10 "c. A taxpayer assistance order shall grant relief
11 as deemed appropriate, including the voiding of any
12 erroneously issued final assessment for a tax which was not a
13 debt due the state, granting of any refund due the taxpayer,
14 or abating an assessment of interest that has accrued because
15 of undue delay by department personnel.

16 "d. At the request of the Alabama Tax Tribunal, ~~the~~
17 a taxpayer advocate shall review a final order issued by the
18 Alabama Tax Tribunal that was not appealed pursuant to Section
19 40-2B-2, if there is newly discovered evidence which by due
20 diligence could not have been discovered in time to file an
21 application for rehearing pursuant to Section 40-2B-2, and may
22 propose relief as the taxpayer advocate deems appropriate and
23 approved by the commissioner or the assistant commissioner.

24 "e. All taxpayer assistance orders shall be dated
25 and signed by ~~the Taxpayer Advocate~~ a taxpayer advocate and
26 approved either by the commissioner or the assistant
27 commissioner, and shall state the underlying facts, the

1 reasons for granting relief, and the relief granted. Any
2 taxpayer assistance order ~~may~~, for good cause, may be modified
3 or rescinded in writing by ~~the Taxpayer Advocate a taxpayer~~
4 advocate and either the commissioner or the assistant
5 commissioner.

6 "f. ~~The Taxpayer Advocate A~~ taxpayer advocate shall
7 have full access to department personnel, books, and records
8 subject, however, to the confidentiality restrictions imposed
9 by this chapter.

10 "g. Taxpayer assistance orders shall not be subject
11 to the confidentiality provisions of this title, and shall be
12 maintained by the secretary of the department and shall be
13 open to review upon written request. ~~The Taxpayer Advocate A~~
14 taxpayer advocate shall have no authority nor issue any ruling
15 with regard to any taxes collected by or on behalf of a
16 self-administered county or municipality.

17 "h. The commissioner shall make an annual report to
18 the Legislature of all taxpayer assistance orders approved in
19 accordance with ~~the provisions of~~ this section and Sections
20 40-2A-2 and 40-2A-3. Such The report shall contain the total
21 amount of relief granted and the types of taxes for which
22 relief was granted.

23 "(2) The department shall maintain a continuing
24 education program to train employees of the department and to
25 provide them with a current knowledge of state and applicable
26 federal tax laws.

"(3) In addition to any other information provided by law, the commissioner shall include in the department's annual report information about the number or kind of audits or assessments conducted in the year covered by the report.

"(4) The department shall not use the amounts of taxes assessed by an employee of the department as:

"a. The basis of a production quota system for employees; or

"b. The basis for evaluating an employee's performance.

"(5) The department shall establish procedures for monitoring the performance of department employees which may include the use of evaluations obtained from taxpayers.

" (6) INSTALLMENT PAYMENTS.

"a. The commissioner is authorized to enter into written agreements to allow any taxpayer to pay any tax in installment payments if the commissioner determines that such agreement will facilitate collection of such tax.

Notwithstanding the preceding sentence, such agreements shall be entered into only regarding a tax that has been finally assessed by the department ~~and not appealed~~, and such agreements shall not extend for a period exceeding 12 months, provided, that any such agreement may be renewed at the discretion of the commissioner for succeeding periods not to exceed 12 months. The commissioner shall only be authorized to enter such an agreement with regard to a tax administered or collected by the department.

"b. The commissioner may terminate, alter, or modify any agreement entered into hereunder if:

"1. Information provided by the taxpayer to the commissioner prior to the date of such agreement was inaccurate or incomplete;

"2. The taxpayer fails to pay any installment at the time such installment payment is due under such agreement;

"3. The taxpayer fails to pay any other tax liability due the department at the time such liability is due, unless the taxpayer has appealed such other liability pursuant to the terms of this chapter;

"4. The financial condition of the taxpayer has significantly changed;

"5. The taxpayer fails to provide a financial condition update as requested by the commissioner; or

"6. The commissioner believes that collection of any tax to which an agreement under this provision relates is in jeopardy.

"c. The commissioner shall have sole authority or discretion to enter into or amend, modify, or terminate any installment payment agreement provided for herein. The commissioner shall promulgate ~~regulations~~ rules necessary for the implementation of this provision.

"d. Any self-administered county or municipality shall have the same authority as provided to the commissioner by this subdivision relating to installment payments with

1 respect to taxes administered or collected by the
2 self-administered county or municipality.

3 "(c) Department failure to comply with this section.
4 The failure of the department to comply with any provision of
5 this section shall not prohibit the department from assessing
6 any tax as provided in this chapter, nor excuse the taxpayer
7 from timely complying with any time limitations under this
8 chapter. However, if the department fails to substantially
9 comply with the provisions of this section, the commissioner
10 shall, upon application by the taxpayer or other good cause
11 shown, shall abate any penalties otherwise arising from the
12 examination or assessment.

13 "(d) Abatement of penalty. The department shall
14 abate any penalty attributable to erroneous written advice
15 furnished to a taxpayer by an employee of the department.
16 However, this section shall apply only if the department
17 employee provided the written advice in good faith while
18 acting in his or her official capacity, the written advice was
19 reasonably relied on by the taxpayer and was in response to a
20 specific written request of the taxpayer, and the penalty did
21 not result from the taxpayer's failure to provide adequate or
22 accurate information.

23 "§40-2A-10.

24 "(a) Except as otherwise provided in this section,
25 it shall be unlawful for any person to print, publish, or
26 divulge, without the written permission or approval of the
27 taxpayer, the return of any taxpayer or any part of the

1 return, or any information secured in arriving at the amount
2 of tax or value reported, for any purpose other than the
3 proper administration of any matter administered by the
4 department, a county, or a municipality, or upon order of any
5 court, or as otherwise allowed in this section. Statistical
6 information pertaining to taxes may be disclosed at the
7 discretion of the commissioner or his or her delegate to the
8 legislative or executive branch of the state. Upon request,
9 the commissioner or his or her delegate may make written
10 disclosure as to the status of compliance of entities subject
11 to state taxes administered by the department. A compliance
12 certificate shall be issued to a requesting person with
13 respect to a business entity if the entity has filed all state
14 tax returns and paid the taxes shown as payable in accordance
15 with those returns except as provided for in this section. The
16 department shall charge a fee of ~~\$10~~ ten dollars (\$10) for
17 each certificate of compliance issued. In addition to any and
18 all funds heretofore or heretofore appropriated, for the
19 fiscal year beginning October 1, 2015, there is appropriated
20 to the department the fees collected for the certificates of
21 compliance. This fee shall be used by the department for
22 administrative purposes. Any person found guilty of violating
23 this section ~~shall~~, for each act of disclosure, shall have
24 committed a Class A misdemeanor. Additionally, to the extent
25 provided in 26 U.S.C. § 7213A, it shall be unlawful for any
26 state employee willfully to inspect, except as authorized in
26 U.S.C. § 6103, any federal tax return or federal tax return

1 information acquired by the employee or another person under a
2 provision of 26 U.S.C. § 6103 referred to in 26 U.S.C. §
3 7213(a)(2).

4 "(b) This section shall not apply to returns filed
5 and information secured under laws of the state (1) governing
6 the registration and titling of motor vehicles, (2) levying or
7 imposing excise taxes or inspection fees upon the sale of,
8 use, and other disposition of gasoline and other petroleum
9 products, (3) governing the licensing of motor vehicle
10 dealers, reconditioners, rebuilders, wholesalers, and
11 automotive dismantlers and parts recyclers, (4) governing the
12 privilege licenses as provided in Chapter 12, other than
13 Article 4, of this title or (5) governing the issuance or
14 affixing of tobacco stamps and governing the online web site
15 listing of permitted and registered tobacco distributors
16 required under Chapter 25.

17 "(c) This section shall not apply to the disclosure
18 of the amount of local privilege license or franchise fees
19 paid to counties and municipalities by any taxpayer possessing
20 a franchise (whether or not exclusive) granted by the
21 respective county or municipality. However, any information
22 other than the amount of license or franchise fees paid,
23 including returns or parts thereof or documents filed with or
24 secured by any municipality or county or their authorized
25 agent and relating to local privilege licenses and franchises
26 shall remain confidential information subject to subsection
27 (a).

"(d) Except as otherwise provided in subdivision (3) of subsection (k) of Section 40-2B-2, the orders of the Alabama Tax Tribunal judge and all evidence, pleadings, and any other information offered or submitted in any appeal before the Alabama Tax Tribunal are not subject to this section.

"(e) The commissioner shall promulgate reasonable regulations rules permitting and governing the exchange of tax returns, information, records, and other documents secured by the department, with tax officers of other agencies of the state, municipal, and county government agencies in the state, federal government agencies, any association of state government tax agencies, any state government tax agencies of other states, and any foreign government tax agencies. However, (1) any tax returns, information, records, or other documents remain subject to the confidentiality provisions set forth in subsection (a); (2) the department may charge a reasonable fee for providing information or documents for the benefit of self-administered counties and municipalities; (3) self-administered counties and municipalities may charge a reasonable fee for providing information or documents for the benefit of the department; and (4) any exchange shall be for one or more of the following purposes:

"a. Collecting taxes due.

"b. Ascertaining the amount of taxes due from any person.

"c. Determining whether a person is liable for, or whether there is probable cause for believing a person might be liable for, the payment of any tax to a federal, state, county, municipal, or foreign government agency.

"(f) (1) Nothing herein shall prohibit the use of tax returns or tax information by the department or county tax collecting officials in the proper administration of any matter administered by the department or county tax collecting officials. The department, a municipality, or county tax official may also divulge to a purchaser, prospective purchaser, as defined pursuant to the regulations of the department, or successor of a business or stock of goods the outstanding sales, use, or rental tax liability of the seller for which the purchaser, prospective purchaser, as defined pursuant to the regulations of the department, or successor may be liable pursuant to Section 40-23-25, 40-23-82, or 40-12-224. This section shall not preclude the inspection of returns by federal or foreign state agents pursuant to Section 40-18-53.

"(2) Upon a request by the State Treasurer, the commissioner may provide the State Treasurer with the names and addresses of those persons entitled to property acquired by the state under Article 2, commencing with Section 35-12-20, of Chapter 12 of Title 35, the Uniform Disposition of Unclaimed Property Act. The information shall be used by the State Treasurer solely for the purpose of administering the Uniform Disposition of Unclaimed Property Act.

"(3) Upon a request by the Secretary of Technology, the commissioner may provide to the Secretary of Technology an annual report outlining the measures employed by the department to maintain the security of taxpayer information protected from disclosure under this section or under federal law, to include federal tax information as defined from time to time in Internal Revenue Service Publication 1075 and which is subject to the confidentiality protections of the Internal Revenue Code, or personal information subject to the confidentiality provisions of the federal Driver's Privacy Protection Act under Public Law 103-322. Except as provided in this subdivision, the development, implementation, and maintenance of the information technology systems of the department shall not be subject to oversight by any other state agency.

"(g) Nothing herein shall prohibit the exchange of information between and among county or municipal governments, provided that any exchange shall be subject to the same restrictions and criminal penalties imposed on the department and its personnel as described in this section.

"(h) In no event shall any damages, attorney fees, or court costs be assessed against the state, a county, or a municipal government under this section, nor shall any damages, attorney fees, or court costs be assessed against elected officials, officers, or employees of a state, county, or municipal government."

1 Section 2. This act shall become effective
2 immediately following its passage and approval by the
3 Governor, or its otherwise becoming law.